

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BEN BALDWIN and GEORGE BALDWIN U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JUL 20 2006

Application No. 09/386,641

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on June 23, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Appellant filed a supplemental Appeal Brief dated August 29, 2005, in response to the notification of non-compliant Appeal Brief filed July 25, 2005. The supplemental Appeal Brief is not in compliance with the new rules under 37 CFR 41.37(c). It is required that a substitute brief be submitted that is in compliance with 37 CFR § 41.37(c), which states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal with stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each claim involved in the appeal, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the supplemental Appeal Brief indicates that the following sections are missing from the supplemental Appeal Brief filed August 29, 2005:

- 1) Summary of claimed subject matter;
- 2) "Evidence Appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 3) "Related Proceedings Appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a substitute Appeal Brief be submitted in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice before the BPAI," Final Rule at:

[Http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinf.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinf.html).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) hold the Supplemental Appeal Brief filed September 29, 2005, defective;
- 2) notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.39;
- 3) consider the Supplemental Appeal Brief;
- 4) if necessary vacate the Examiner's Answer mailed January 4, 2006;

Application No. 09/386,641

5) if necessary, issue a revised Examiner's Answer in accordance with the rules effective September 13, 2004, and

6) for any further action as seemed appropriate.

BOARD OF PATENT APPEAL
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'D. M. Shaw', written over a horizontal line.

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DMS/dpv

Application No. 09/386,641

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